



This document is scheduled to be published in the Federal Register on 11/16/2012 and available online at <http://federalregister.gov/a/2012-27749>, and on FDsys.gov

(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AH79

Defense Federal Acquisition Regulation Supplement: New Free Trade Agreement—Panama (DFARS Case 2012-D044)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States—Panama Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Panama.

DATES: Effective date: [Insert date of publication in the **FEDERAL REGISTER.**]

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the **FEDERAL REGISTER**], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012-D044, using any of the following methods:

Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D044" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D044." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D044" on your attached document.

Email: dfars@osd.mil. Include DFARS Case 2012-D044 in the subject line of the message.

Fax: 571-372-6094.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule amends DFARS part 252 to implement the United States–Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note).

This Trade Promotion Agreement is designated in the FAR as the Panama Free Trade Agreement (FTA). The FTA provides for–

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from Panama; and
- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

II. Discussion and Analysis

This interim rule adds Panama to the definition of “Free Trade Agreement country” in multiple locations in the DFARS. The Panama FTA covers acquisitions of supplies and services equal to or exceeding \$202,000. The Panama FTA threshold for supplies and services is higher than the threshold for supplies and services for most of the FTAs (\$77,494), and equals the Bahrain, Morocco, and Peru FTA thresholds for supplies and services (\$202,000). Therefore, for acquisition less than \$202,000 (or \$100,000 for Korea), all FTAs are applicable except for the Bahrain, Korea, Morocco, Panama, and Peru FTAs.

Because the Panama FTA's construction threshold of \$7,777,000 is the same as the WTO GPA threshold, no new clause alternates are required for the Balance of Payments Program—Construction Material under Trade Agreements clause (DFARS 252.225-7045).

There are also conforming changes to the clause at DFARS 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule now opens up Government procurement to the goods and services of Panama at or above the threshold of \$202,000, DoD does not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401-70, and acquisitions that are set aside or provide other forms of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions that do not exceed \$150,000 (with some exceptions) are automatically reserved exclusively for small business concerns. Therefore, DoD has not performed an Initial Regulatory Flexibility Analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2012-D044), in correspondence.

V. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and

252.225-7035, currently approved under OMB Control Number 0704-229, titled Defense Federal Acquisition Regulation Supplement part 225, Foreign Acquisition, and related clauses, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because it is just a question of under which category offered goods from Panama would be listed. The rule also affects DFARS 252.225-7018, which is a variant of the Buy American-trade agreements certifications already approved, which was issued as an interim rule under DFARS Case 2011-D046 (76 FR 78858, December 20, 2011).

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Free Trade Agreement with Panama, for which the President signed the implementing legislation into law on October 21, 2012 Pub. L. 112-043), took effect on October 31, 2012. This is a reciprocal agreement, approved by Congress and the President of the United States. It is important for the United States Government to honor its new trade obligations to Panama, as Panama in turn honors the new trade obligations to the United States. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD will consider

public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.212-7001 [Amended]

2. Section 252.212-7001 is amended as follows:

a. The clause heading is amended by removing the clause date "(JUN 2012)" and adding "(NOV 2012)" in its place.

b. Paragraph (b)(12) is amended by removing the clause date "(JUN 2012)" and adding "(NOV 2012)" in its place.

c. Paragraph (b)(13)(i) is amended by removing the clause date "(JUN 2012)" and adding "(NOV 2012)" in its place.

d. Paragraphs (b)(16)(i), (iii), (v), and (vi) are amended by removing the clause date "(JUN 2012)" and adding "(NOV 2012)"

in its place.

3. Section 252.225-7017 is amended—

a. In the clause heading, by removing the clause date "(AUG 2012)" and adding "(NOV 2012)" in its place;

b. In paragraph (a):

i. In the definition of "designated country", paragraph (ii), by adding in alphabetical order the country "Panama,";

ii. In the definition of "Free Trade Agreement country", by adding in alphabetical order the country "Panama,"; and

iii. By adding in alphabetical order a definition for "Panamanian photovoltaic device";

c. By revising paragraphs (c) (3) and (4).

The additions and revisions read as follows:

252.225-7017 Photovoltaic Devices.

* * * * *

(a) * * *

"Panamanian photovoltaic device" means an article that—

(i) Is wholly manufactured in Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

* * * * *

(c)* * *

(3) \$77,494 or more but less than \$100,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices–Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device;

(4) \$100,000 or more but less than \$202,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, Panamanian or Peruvian photovoltaic devices),

unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices–Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device; or

* * * * *

4. Section 252.225-7018 is amended by removing the clause date "(MAY 2012)" and adding "(NOV 2012)" in its place and revising paragraphs (a), (c)(4), and (c)(5) to read as follows:

252.225-7018 Photovoltaic Devices–Certificate.

* * * * *

(a) *Definitions.* "Bahrainian photovoltaic device," "Canadian photovoltaic device," "Caribbean Basin photovoltaic device," "designated country," "domestic photovoltaic device," "foreign photovoltaic device," "Free Trade Agreement country," "Free Trade Agreement photovoltaic device," "Korean photovoltaic device," "least developed country photovoltaic device," "Moroccan photovoltaic device," "Panamanian photovoltaic device," "Peruvian

photovoltaic device," "photovoltaic device," "qualifying country," "qualifying country photovoltaic device," "United States," "U.S.-made photovoltaic device," and "WTO GPA country photovoltaic device" have the meanings given in the Photovoltaic Devices clause of this solicitation.

* * * * *

(c) * * *

(4) If \$77,494 or more but less than \$100,000—

_____ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Korean, Moroccan, Panamanian, or Peruvian photovoltaic device) [*Offeror to specify country of origin*_____]; or

_____ (ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c) (4) (i) of this provision) are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(5) If \$100,000 or more but less than \$202,000—

_____ (i) The offeror certifies that each photovoltaic device

to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, Panamanian, or Peruvian photovoltaic device) [*Offeror to specify country of origin_____*]; or

_____(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c)(4)(i) of this provision) are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

* * * * *

5. Section 252.225-7021 is amended by removing the clause date "(JUN 2012)" and adding "(NOV 2012)" in its place, and in paragraph (a), in the definition for "designated country," by revising paragraph (ii) to read as follows:

252.225-7021 Trade agreements.

* * * * *

(a) * * *

"Designated country" means—

* * * * *

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

* * * * *

6. Section 252.225-7035 is amended by—

a. Removing the clause date "(JUN 2012)" and adding "(NOV 2012)" in its place;

b. Adding the paragraph designation "(a)" to the "Definitions" paragraph;

c. Revising newly designated paragraph (a) and paragraphs (b) and (c); and

d. Revising alternates I, II, IV, and V.

The revisions read as follows:

252.225-7035 Buy American--Free Trade Agreements--Balance of Payments Program Certificate.

* * * * *

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Moroccan end product," "Panamanian end product," "Peruvian end product," "qualifying country end product," and "United States," as used in

this provision, have the meanings given in the Buy American-Free Trade Agreements-Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of Part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.* (1) For all line items subject to the Buy American-Free Trade Agreements-Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) end products:

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
---------------------------	----------------------------

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products or Peruvian end products:

<u>(Line Item Number)</u>	<u>(Country of Origin)</u>
---------------------------	----------------------------

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in

paragraph (ii) of the definition of "domestic end product":

<u>(Line Item Number)</u>	<u>(Country of Origin (If known))</u>
---------------------------	---------------------------------------

* * * * *

ALTERNATE I (NOV 2012)

As prescribed in 225.1101(10)(ii), substitute the phrase "Canadian end product" for the phrases "Bahrainian end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Moroccan end product," "Panamanian end product," and "Peruvian end products" in paragraph (a) of the basic provision; substitute the phrase "Canadian end products" for the phrase "Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision; and delete the phrase "Australian or" from paragraph (c)(2)(i) of the basic provision.

ALTERNATE II (NOV 2012)

As prescribed in 225.1101(10)(iii), add the terms "South Caucasus/Central and South Asian (SC/CASA) state" and "South Caucasus/Central and South Asian (SC/CASA) state end product" in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause.

(b)(2) For line items subject to Free Trade Agreements, will

evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number)

(Country of Origin)

(End of provision)

* * * * *

ALTERNATE IV (NOV 2012) As prescribed in 225.1101(10)(v), add a definition of "Korean end product" in paragraph (a) of the basic provision; substitute the phrase "Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products" for the phrase "Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products" in paragraphs (b)(2) and (c)(2)(ii) of the basic provision.

ALTERNATE V (NOV 2012) As prescribed in 225.1101(10)(vi), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Korean end product," "Moroccan end product," "Panamanian end product," "Peruvian end product," "qualifying country end product," "South Caucasus/Central and South Asian (SC/CASA) state end product," and "United States," as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number)

(Country of Origin)

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products:

(Line Item Number)

(Country of Origin)

7. Section 252.225-7036 is amended by

a. Removing the clause date "(JUN 2012)" and adding "(NOV 2012)" in its place;

b. In paragraph (a), in the definition of "Free Trade Agreement country," adding in alphabetical order the country of "Panama,";

c. In paragraph (a), adding in alphabetical order a definition for "Panamanian end product"; and

d. Revising paragraph (c) and ALTERNATE II, IV, and V.

The additions and revisions read as follows:

252.225-7036 Buy American-Free Trade Agreements--Balance of Payments Program.

* * * * *

(a) * * *

"Panamanian end product" means an article that--

(i) Is wholly the growth, product, or manufacture of Panama; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Panama into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

* * * * *

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American-Free Trade Agreements-Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

* * * * *

ALTERNATE II (NOV 2012)

As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) "South Caucasus/Central and South Asian (SC/CASA) state"

means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end

products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American-Free Trade Agreements-Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

* * * * *

ALTERNATE IV (NOV 2012)

As prescribed in 225.1101(11)(i)(C), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) "Korean end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American-Free Trade Agreements-Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, a Free

Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, or, at the Contractor's option, a domestic end product.

ALTERNATE V (NOV 2012)

As prescribed in 225.1101(11)(i)(C), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a) "Korean end product" means an article that—

(i) Is wholly the growth, product, or manufacture of Korea; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Korea (Republic of) into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services

does not exceed the value of the product itself.

"South Caucasus/Central and South Asian (SC/CASA) state" means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

"South Caucasus/Central and South Asian (SC/CASA) state end product" means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only

domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products, Korean end products, Moroccan end products, Panamanian end products, or Peruvian end products, or other foreign end products in the Buy American–Free Trade Agreements–Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product, a Korean end product, a Moroccan end product, a Panamanian end product, or a Peruvian end product or, at the Contractor's option, a domestic end product.

8. Section 252.225-7045 is amended by–

a. Removing the clause date "(MAY 2012)" and adding "(NOV 2012)" in its place; and

b. Revising paragraph (a)(2) of the definition for "designated country" to read as follows:

252.225-7045 Balance of Payments Program--Construction Material
Under Trade Agreements.

* * * * *

(a) * * *

"Designated country" means—

* * * * *

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Panama, Peru, or Singapore);

* * * * *

[FR Doc. 2012-27749 Filed 11/15/2012 at 8:45 am; Publication Date:
11/16/2012]